

## REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. Support for all amendments may be found, among other places, on page 5 of the specification as originally filed. Therefore, all amendments are made in compliance with 35 USC §132 and no new matter has been added. Moreover, Applicants affirm the election of claims 1-18, and however, believe that all claims of record may be examined with serious burden to the Examiner. Nevertheless, Applicants will consider the cancellation of the non-elected claim upon indication that the elected claims are in condition for allowance.

### I. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-3, 7-9, 12, 15 and 16 of the 35 USC §102(b) as being clearly anticipated by Kahan, U.S. Patent No. 3,119,695 (hereinafter '695). In summary, the Examiner suggests that the claimed invention is anticipated by columns 3-5, columns 7-8 and Figures 1-3 of the '695 reference. In view of this the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention is directed to a beverage product comprising a dispenser and a beverage in which the dispenser has a container for holding the beverage and a valve which is bias to a position where it seals the container, but which is operable to enable

the beverage to be dispensed from the container and in which the beverage is a liquid having a sparingly soluble effervescence inducing gas dissolved therein, the beverage product being characterized in that the beverage is held under a gaseous pressure in the head space above the liquid beverage in the container that is sufficient to cause the beverage to be discharged directly into the consumer's mouth from the dispenser as an effervescent fluid when the valve is open wherein the beverage is held under a gaseous pressure in the headspace of at least 2.5 atmospheres at 5 to 15°C.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of gas employed, the fact that effervescent fluid is dispensed from the beverage product, the type of valve, the type of beverage, the employment of a dip tube, the volume of the head space, and the prevention of opening of the valve when the dispenser is inverted.

In contrast, the '695 reference is directed to pressurized liquid instant coffee. The pressurized liquid instant coffee of the '695 reference is in an aerosol can which operates to release a flow of concentrated liquid instant coffee into a teaspoon. If a metered type of valve is used then a teaspoon worth of instant coffee is then released into a coffee cup without employing a teaspoon. The addition of water will then result in a beverage ready for consumption by a consumer. (Please see column 8, lines 38-45). Clearly, the beverage consumed in the '695 reference is not effervescent. The packaging involved in the '695 reference is merely designed to dispense a teaspoon worth of concentrated instant coffee into a cup so that a beverage ready for consumption can be made after water is added.

There is nothing whatsoever in the '695 reference that suggests a beverage product as claimed in the present invention. This is true because nothing in the '695 reference suggests a beverage product that can dispense an effervescent fluid directly into the mouth of the consumer.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single prior art source, namely the '695 reference. Therefore, Applicants respectfully request that the novelty rejection be withdrawn and rendered moot.

## II. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1,3, 4, 7-9, 12, 15 and 16 under 35 USC §102(b) as being anticipated by Walker, U.S. Patent No. 625,280 (hereinafter '280). In the rejection, the Examiner mentions, in summary, that page 1 and the Figure render the instant claims anticipated.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the claimed invention, as amended, is directed to a beverage product comprising of a dispenser and beverage in which the dispenser has a container for holding the beverage and the beverage can be discharged directly into a consumer's mouth as an effervescent fluid. In contrast, the '280 reference is directed to a method and means for preserving liquids. The '280 reference describes packaging

a liquid for sterilization purposes wherein the package for carrying the liquid will be especially useful in hospitals and other localities where diseases need special attention.

Turning to the figure in the '280 reference, the package depicted in the figure is not designed to discharge an effervescent beverage directly into the mouth of the consumer. In fact, the package set forth in the figure is meant for carrying large volumes of liquid in sterile form. In view of this, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the single prior art reference, namely the '280 reference. Therefore, the rejection made under 35 USC §102(b) should be withdrawn and rendered moot.

### III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 2, 5, 6, 7, 9, 15 and 16 under 35 USC §102(b) as being anticipated by Ash, U.S. Patent No. 3,063,841 (hereinafter '841). In the rejection, the Examiner mentions, in summary, that the claims are anticipated by columns 1-3 of the '841 reference.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product comprising a dispenser and a beverage whereby liquid beverage can be discharged directly in the consumer's mouth as an effervescent fluid.

In contrast, the '841 reference merely discloses a method for dispensing liquid or beverage under pressure into a drinking vessel so as to ensure a fine, regular and enduring head on the beverage dispensed into the vessel. Looking at figure 1 of the '841 reference, the figure depicts a device that is similar to a faucet in a conventional sink. Clearly, such a device cannot discharge beverage directly into the mouth of a consumer as set forth in the claimed invention. In this regard, Applicants respectfully request that the novelty rejection be withdrawn and rendered moot.

#### IV. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-3, 5,6, 7, 9, and 16 under 35 USC §102(b) as being clearly anticipated by Fox et al., U.S. Patent No. 2,977,231 (hereinafter '231). In the rejection, the Examiner mentions, in summary, that columns 2, 9 and column 17, as well as Examples 5-12 and 18-20 render the claims anticipated.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product comprising a dispenser and a beverage in which the dispenser has a container for holding the beverage wherein the container is sufficient to cause the beverage to be discharged directly into the consumer's mouth as an effervescent fluid.

In contrast, the '231 reference is directed to a pressurized container for discharging a small high velocity stream into a glass of milk or water to produce self-agitation and a

final product ready for consumption by the consumer. Clearly, a high velocity stream is not desirable to discharge directly into the mouth of the consumer and is certainly not an effervescent beverage. Moreover, the beverage ready for consumption in the '231 reference is not discharged from the pressurized container, but is made in the glass of milk or water desired by the consumer.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not set forth in the '231 reference. Therefore, Applicants respectfully request that the novelty rejection be withdrawn and rendered moot.

V. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 3 and 5-9 under 35 USC §102(b) as being anticipated by Steinberg et al., U.S. Patent No. 3,480,185 (hereinafter '185). In the rejection, the Examiner mentions, in summary, that column 1 and column 2 anticipate the claims.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product whereby effervescent beverage is directly discharged from a container into a consumer's mouth.

In contrast, the '185 reference merely discloses a liquid effervescent pharmaceutical composition whereby the composition is released from a container into water so that solid ingredients instantaneously dissolve to form a carbonated fluid containing medication. There is nothing whatsoever in the '185 reference that suggest the discharging of an effervescent beverage from a container directly into a consumer's mouth. In view of this, all of the critical limitations set forth in the presently claimed inventions, as amended, are not set forth in the '185 reference. Therefore, the novelty rejection should be withdrawn and rendered moot.

VI. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 3, 7, 9, 10, 12 and 16 under 35 USC §102(b) as being anticipated by Wery et al., U.S. Patent No. 5,607,087 (hereinafter '087). In the rejection, the Examiner mentions, in summary, that columns 4-7 render the claims anticipated.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the claimed invention, as amended, is directed to a beverage in which a dispenser has a container for holding the beverage to be discharged directly into the mouth of a consumer as an effervescent fluid. Such a beverage is held under a gaseous pressure in a head space of at least 2.5 atmospheres gauge at 5-15°C. Such a head space pressure is important to dispense the effervescent beverage, and is not described in the '087 reference. Therefore, the '087

reference cannot be used to formulate a proper novelty rejection. In this regard, Applicants respectfully request that the novelty rejection be withdrawn and rendered moot.

VII. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 3, 7, 12, 16 and 17 under 35 USC §102(b) as being anticipated by Doundoulakis, U.S. Patent No. 5,110,014 (hereinafter '014). In the rejection, the Examiner mentions that the abstract, column 1, column 3 and column 4 anticipate the claims.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Claim 1 has been amended to include the limitations of claim 2 which set forth the head space pressure within the beverage product. Since the '014 reference fails in every viable way to teach, suggest or disclose the head space pressure as set forth in the claims, as amended, the novelty rejection relying on the same should be withdrawn and rendered moot.

VIII. Rejection Under 35 USC §103

The Examiner has rejected claim 11 under 35 USC §103 as being unpatentable over Wery et al., U.S. Patent No. 5,607,087 (hereinafter '087) in view of Bergman, SE 9801752 A (hereinafter '752). In the rejection, the Examiner mentions, in summary,



that the '087 reference describes a valve for water or juice dispensing that is operated by biting, but is silent in teaching a button. The Examiner relies on Bergman for allegedly showing a water dispensing valve operated by biting. In view of this, the Examiner believes that claim 11 is obvious.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product comprising a dispenser and a beverage in which the dispenser has a container for holding the beverage such that the beverage can be discharged directly into a consumer's mouth in the form as an effervescent fluid.

Claim 11 further limits the independent claim to include a button mounted in an outlet portion, whereby the button can be moved by a biting action applied to the outlet portion.

In contrast, and as already made of record, the '087 reference is merely directed to a pressurized fluid dispensing device for a cycle and the reference does not teach the important headspace pressure now set forth in the independent claim, as amended. None of the deficiencies of the '087 reference are even remotely cured by the '752 reference since the '752 reference does not disclose the discharging of an effervescent beverage directly into the mouth of a consumer.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, Applicants respectfully request that the rejection made be withdrawn and rendered moot.

IX. Rejection Under 35 USC §103

The Examiner has rejected claim 13 under 35 USC §103 as being unpatentable over Kahan, U.S. Patent No. 3,119,695 (hereinafter '695) as applied to the claims above further in view of Kohler et al., U.S. Patent No. 5,143,288 (hereinafter '288). In the rejection, the Examiner mentions, in summary, that the '695 reference teaches an aerosol valve with a dip tube, but is silent in teaching that the dip tube includes holes in communication with a headspace. In view of this, the Examiner relies on the '288 reference for allegedly teaching the use of a hole in communication with a headspace of a container. The Examiner believes, therefore, that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product comprising a dispenser and a beverage whereby a liquid beverage can be discharged directly into the mouth of a consumer as a effervescent fluid. The invention is further defined by specific headspace pressure. In contrast, the '695 reference is directed to pressurized liquid instant coffee. The pressurized liquid instant coffee of the '695 reference is in an aerosol can which operates to release a flow of concentrate liquid

instant coffee into a teaspoon. If a meter type of valve is used then a teaspoon of instant coffee is then released into a coffee cup without employing a teaspoon. The addition of water will then result in a beverage ready for consumption by a consumer. Clearly, the beverage consumed in the '695 reference is not effervescent. The packaging involved in the '695 reference is merely designed to dispense a teaspoon worth of concentrated instant coffee into a cup so that a beverage ready for consumption can be made after water is added. No effervescent beverage is released directly into a consumer's mouth when using the can described in the '695 reference. Moreover, nothing in the '695 reference suggests the headspace pressure as set forth in the independent claim.

The vast deficiencies are not cured by the '288 reference since the '288 reference merely describes an apparatus to produce and maintain an effective aerosol spray. The combination relied on by the Examiner does not, even remotely, teach, suggest any of the important claim limitations set forth in the present invention. In view of this, Applicants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

X. Rejection Under 35 USC §103

The Examiner has rejected claim 14 under 35 USC §103 as being unpatentable over Kahan, U.S. Patent No. 3,119,695 (hereinafter '695) in view of Kohler et al., U.S. Patent No. 5,143,288 (hereinafter '288) as applied to claim 13 above, and further in view of Berg Jr. et al., U.S. Patent No. 3,947,567 (hereinafter '567). In the rejection, the Examiner admits that the '695 reference does not mention the amount of gas discharged but that the '567 reference teaches compositions for forming effervescent

liquids. Thus, the Examiner believes the obviousness rejection is warranted, notwithstanding the fact that the Examiner does not mention why the '288 reference is relied upon.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product comprising a dispenser and beverage in which the dispenser has a container for holding the beverage and the beverage can be discharged directly into a consumer's mouth as an effervescent fluid. The '695 reference, again, is merely directed to pressurized liquid instant coffee. Nothing in the '695 reference suggests a beverage product suitable to dispense effervescent fluid directly into the mouth of a consumer. The '288 reference is directed to compressed gas aerosol spray system with a dip tube and vapor tap hole. The '567 reference is directed to effervescent cleaners. The combination relied on by the Examiner does not, even remotely, suggest a dispensing device suitable to dispense effervescent beverage directly into the mouth of a consumer whereby the device has a specific headspace pressure and a specific quantity of gas expelled when a valve is opened. In view of the above, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

#### XI. Rejection Under 35 USC §103

The Examiner has rejected claim 18 as being unpatentable over Doundoulakis, U.S. Patent No. 5,110,014 (hereinafter '014) as applied to claims 1, 3, 7, 12, 16 and 17

above, further in view of Rasmussen, WO 94/15871 (hereinafter '871). In the rejection, the Examiner mentions, in summary, that the '014 reference teaches adding a nitrogen filled widget to maintain pressure and flavor during storage. The Examiner admits that the '014 reference is silent in teaching that the widget includes flavors, however relies on the '871 reference which allegedly teaches nitrogen filled widgets for beverage containers. In view of the above, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage product that is suitable to dispense effervescent beverage directly into the mouth of a consumer. Such a product has a specific headspace pressure as defined by independent claim 1. Independent claim 1 is further defined by dependent claims 17 and 18 whereby sparingly soluble effervescent inducing gas and concentrated flavor are contained in a widget that release its contents into the container when a valve is opened. The '014 reference, particularly as set forth in the figure, is directed to a bi-stable pressure maintaining gas container that is not suitable to dispense effervescent beverages directly into the mouth of the consumer. Moreover, the '014 reference is silent to the headspace pressures described in the claimed invention. None of the deficiencies of the '014 reference are cured by the '871 reference since the '871 reference merely describes the production of foam, for example, in beer. Since all the limitations set forth in the claimed invention are not even remotely described in the combination of

references relied on by the Examiner, it is respectfully requested that the obviousness rejection be withdrawn and rendered moot.

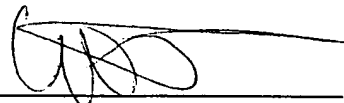
XII. Obviousness Type-Double Patenting Rejection

The Examiner has issued a multitude of obviousness type-double patenting rejections in the present application in view of co-pending Application No. 10/081,575. While Applicants respectfully disagree, enclosed herewith is a terminal disclaimer. This terminal disclaimer is provided to further business objectives and expedite the prosecution of the present patent application.

In view of the above, Applicants respectfully submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



Edward A. Squillante, Jr.  
Attorney for Applicant(s)  
Reg. No. 38,319

EAS:pod  
(201) 840-2925